

1 APPEARANCES: (Continued)

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1 (The following was heard in open court at
2 2:02 p.m.)

3 THE COURT: We are here today for a hearing
4 on the defendants' motion to dismiss the plaintiff's
5 third amended complaint. Who wants to go first for the
6 defendants?

7 MR. ATKINS: I will go first, Your Honor. I
8 represent the City of Philadelphia, Brock Atkins.

9 THE COURT: Okay. Mr. Atkins, right?

10 MR. ATKINS: Yes, Your Honor. Yes, Your
11 Honor.

12 THE COURT: Okay. We read the papers, so
13 just give me the bottom line.

14 MR. ATKINS: The bottom line, Your Honor, is
15 that the plaintiff has not identified past instances of
16 wrongdoing that would go to substantiate his claim that
17 there is a unconstitutional policy, practice or
18 procedure in the City of Philadelphia.

19 He does try to identify other instances where
20 judges have said that motions to dismiss are denied,
21 and motions for summary judgment are denied, but again,
22 these aren't findings of wrongdoing.

23 More importantly, these aren't findings of
24 wrongdoing in this particular case according to the
25 allegations in this case.

1 THE COURT: Well, let me ask you this. Let
2 me clarify a couple of things. Number one, you haven't
3 moved to dismiss the case against Detective Hammond and
4 Police Officer Carter, is that right?

5 MR. ATKINS: That is correct, Your Honor.

6 THE COURT: Okay. So, those are individuals
7 claims and we will handle them in the regular course of
8 business.

9 MR. ATKINS: Yes, we will.

10 THE COURT: So, your argument is a Monel
11 argument --

12 MR. ATKINS: That is correct.

13 THE COURT: -- is that what you're saying?

14 MR. ATKINS: Yes, Your Honor.

15 THE COURT: Okay. So, what is the policy
16 that is at issue here? Now, they said that the D.A.
17 was a policy maker.

18 MR. ATKINS: Well, the D.A. is here, Your
19 Honor. They are going to represent their interest in
20 this case.

21 THE COURT: Okay.

22 MR. ATKINS: They have been served now, I
23 believe.

24 THE COURT: Okay.

25 MR. ATKINS: I represent the City of

1 Philadelphia --

2 THE COURT: So, what is your Monel argument
3 then?

4 MR. ATKINS: My Monel argument is that the
5 plaintiff has not identified a policy, practice or
6 procedure, and beyond that he has to show evidence of
7 other wrongdoing. It can't be one instance of
8 wrongdoing.

9 THE COURT: Well, sometimes it could be one,
10 but not here.

11 MR. ATKINS: Sometimes it can, you're
12 correct, Your Honor.

13 THE COURT: Yes.

14 MR. ATKINS: But, in this instance this act
15 was not egregious enough --

16 THE COURT: Yes.

17 MR. ATKINS: -- to constitute one instance to
18 show if there is a policy. What he has shown is other
19 cases where judges have said we're going to deny a
20 motion to dismiss or deny a summary judgment motion,
21 but that's not proof of wrongdoing.

22 More importantly, the cases that plaintiff
23 cites to, the facts aren't even similar to this case.
24 What plaintiff needs to show is that a policy, practice
25 or procedure was a moving force that caused the alleged

1 constitutional violation to his client.

2 THE COURT: And that if it had been in place
3 it would have prevented it from happening, right, and
4 it's failure to train, right? In other words, if this
5 officer had been properly trained, this wouldn't have
6 happened.

7 MR. ATKINS: I'm assuming that's his
8 allegation, yes, Your Honor.

9 THE COURT: Yes. Okay.

10 MR. ATKINS: So, he has to show other
11 instances where there have been failure to train -- he
12 has to show proof of failure to train is a policy or
13 practice from the City of Philadelphia, naming other
14 cases where judges have said I'm denying your motion
15 for summary judgment on Monel doesn't prove that the
16 City has failed to train detectives --

17 THE COURT: Right.

18 MR. ATKINS: -- of how to properly complete
19 an affidavit, if that is even true.

20 THE COURT: Right. Okay.

21 MR. ATKINS: And it's just a moving force,
22 and he hasn't identified the policy or hasn't
23 identified the failure to train, and hasn't shown how
24 that is a moving force that caused his client's injury.

25 THE COURT: Okay. Thank you. Let me ask Mr.

1 Scalera, maybe these questions are more appropriate to
2 you.

3 MR. SCALERA: Yes, Your Honor.

4 THE COURT: Have you looked at the state
5 record as to what happened here?

6 MR. SCALERA: I looked at it briefly. I
7 pulled the file -- I couldn't pull the docket because
8 the record has been expunged, so even the court doesn't
9 have that docket.

10 THE COURT: You mean it doesn't exist?

11 MR. SCALERA: Not that I can find.

12 THE COURT: So, how do we know what happened,
13 why it was dismissed or what were the circumstances?

14 MR. SCALERA: We do have some of the
15 underlying records. I'm speaking specifically about
16 the docket. What some of our records show, and I am a
17 little nervous at getting beyond the four corners of
18 the complaint here, but just to paint with sort of a
19 broad brush, is that according to the A.D.A.'s records
20 this case came up for trial several times and each time
21 the marking on the file says C/R which stands for
22 "Commonwealth ready."

23 What happened each time was that either the
24 plaintiff's defense attorney had another trial and,
25 therefore, sought a continuance or the court itself in

1 the CJC had a trial and, therefore, required a
2 continuance and often these continuances can be six
3 months or longer.

4 But, according to our records and, again --

5 THE COURT: So, the Speedy Trial Act doesn't
6 really doesn't work there in the sense of the Supreme
7 Court's pronouncement of how quickly these cases should
8 go to trial if there is a continuance granted.

9 MR. SCALERA: That's correct, Your Honor.
10 And, again, I am not looking to --

11 THE COURT: I am not holding you to it, but I
12 wanted to get a sense because if we don't have the
13 state record -- now, how did the case get expunged?
14 How does that happen?

15 MR. SCALERA: Frankly, the plaintiff and
16 plaintiff's counsel may be able to speak to that in
17 terms of how they specifically went about it.

18 My understanding, and we have an expungement
19 unit that I am not a part of it, so --

20 THE COURT: Yes.

21 MR. SCALERA: -- I can't speak really
22 authoritatively on this, but I do believe that it's the
23 individual who makes a motion for expungement and then
24 the court makes a determination that --

25 THE COURT: And the records sort of go away

1 at that point?

2 MR. SCALERA: I think the court's records at
3 that point are destroyed in a case of an expungement.
4 Again, I am not really --

5 THE COURT: Right.

6 MR. SCALERA: -- the person to ask, but this
7 is my limited understanding of the expungement process.

8 THE COURT: Okay. So, what about the earlier
9 part of it, A.D.A. Gore, her role in it, what can you
10 say about that?

11 MR. SCALERA: Well, what happened here,
12 according to the complaint, is that the victim which I
13 believe the complaint says was the plaintiff's
14 granddaughter accused him of raping her, and so the
15 police prepared an affidavit of probable cause and
16 arrest warrant, and A.D.A. Gore proceeded to prosecute
17 him based on the testimony or the statement of the
18 victim that her grandfather had raped her.

19 It does look like at least according to the
20 allegations of complaint, I having seen the charging
21 documents myself, but according to the allegations of
22 the complaint it does look like there are alleged
23 errors including the address of the plaintiff, the race
24 and sex of the plaintiff and by plaintiff I mean the
25 defendant in the --

1 THE COURT: Yes.

2 MR. SCALERA: -- underlying criminal case and
3 the --

4 THE COURT: Age, I think, yes.

5 THE COURT: -- age of the victim, which one
6 thing I do want to correct is apparently the charging
7 papers said the victim was 11 when according to the
8 complaint the victim was, in fact, four and in his
9 response to our motion to dismiss plaintiff says that
10 well, this makes a difference because no one would
11 believe that a man I think physiologically could rape a
12 four-year-old. It saddens me to say --

13 THE COURT: Yes.

14 MR. SCALERA: -- that that is simply not
15 correct.

16 THE COURT: Okay.

17 MR. SCALERA: Four-year-old's are raped in
18 this country.

19 THE COURT: Yes, yes.

20 MR. SCALERA: It's a sad world we live in,
21 but those appear to be the errors. Those errors are
22 not material to a determination of probable cause.

23 THE COURT: Now, the circumstances of why the
24 case was dismissed, there was -- and I don't recall
25 exactly, what happened the day that the case was

1 dismissed, whether the plaintiff in this case, the
2 defendant in the criminal case, was offered a time
3 served sentence and when he didn't accept that then the
4 case was dismissed, how was that all fleshed out?

5 MR. SCALERA: Well, again, we're going beyond
6 the four corners of the complaint, so I just want --

7 THE COURT: Yes.

8 MR. SCALERA: -- to be careful about not
9 transforming into a summary judgment motion.

10 THE COURT: No, but I am asking you how do
11 you determine that?

12 MR. SCALERA: What happened here, Your Honor,
13 is that on the first day of plaintiff's criminal trial
14 the victim or alleged victim recanted her story.

15 THE COURT: Yes. How old was she, 11 or
16 four?

17 MR. SCALERA: I believe according -- the
18 complaint states that she was four and, again, we are
19 accepting that as true --

20 THE COURT: Four plus then whatever --

21 MR. SCALERA: Plus I suppose --

22 THE COURT: -- in two or three that occurs
23 she would be about seven by then.

24 MR. SCALERA: -- three years would make her I
25 believe seven.

1 THE COURT: Yes.

2 MR. SCALERA: So, my understanding from
3 looking over the file is that she recanted her story,
4 that she said that her mother told her to lie about
5 being raped at which point Ms. Gore nol prossed the
6 case.

7 THE COURT: Okay. Well, did she offer a time
8 served sentence?

9 MR. SCALERA: I'm afraid I don't know, Your
10 Honor.

11 THE COURT: Okay. Is Ms. Gore still with you
12 or is --

13 MR. SCALERA: No, Your Honor, she is no
14 longer with D.A.'s office.

15 THE COURT: Okay. But is around somewhere
16 here in Philadelphia, do you know?

17 MR. SCALERA: I don't actually know, Your
18 Honor.

19 THE COURT: So what's your -- what's the
20 legal defense here, at this point?

21 MR. SCALERA: Well, as far as the claims that
22 I could suss (sic) out from the complaint though, it
23 looks like we certainly have a 1985 claim against the
24 D.A.'s office.

25 There are two problems with this claim. The

1 first problem is that if you accept the Supreme Court's
2 parsing of the 1985 which is a fairly byzantine statute
3 of the five subsections that could be used to sustain a
4 1985 claim only to have been involved state interest,
5 the rest are interfering for federal election, federal
6 courts and of those two, the Supreme Court in Kush v.
7 Rutledge and in Griffin v. Breckenridge has made clear
8 that these are conspiracies that are based in equal
9 protection violations.

10 THE COURT: Right.

11 MR. SCALERA: Which require some sort of
12 allegation in the complaint that there has been a
13 discriminatory animus or motivation.

14 THE COURT: A racial motivation?

15 MR. SCALERA: Racial or some other protected
16 class.

17 THE COURT: Okay.

18 MR. SCALERA: That's not -- none of that is
19 alleged in the complaint. I'm assuming that it would
20 be racial, but it could be, I imagine, other protected
21 classes as well.

22 In this case, I think we would be dealing
23 with race as a protected class and the problem is that
24 there's simply no allegation in the complaint that
25 there has been any sort of --

1 THE COURT: Right, I agree.

2 MR. SCALERA: -- discriminatory motivation
3 and I don't think there could be consistent with
4 plaintiff's obligations under Rule 11. So, that right
5 there just nullifies --

6 THE COURT: Okay. That takes care of 1985,
7 so what else?

8 MR. SCALERA: Yes, I do want to make the
9 point that I raised the intercorporate conspiracy
10 doctrine. I don't think we really need to get into
11 that.

12 THE COURT: Right.

13 MR. SCALERA: The plaintiff's defense to that
14 is that well, under Carter v. City of Philadelphia, Ms.
15 Gore was acting and the D.A.'s office and was acting in
16 a prosecutorial capacity which makes them a
17 representative of the state and not a representative of
18 the City.

19 If that were the case, then the entire claim
20 against the D.A. defendants would be barred by the
21 Eleventh Amendment. Either we represented the City or
22 we represent the state. There is no daylight between
23 those and if we represented the state, then all the
24 claims against us would be barred under the Eleventh
25 11th Amendment because it would be an action for money

1 damages against the state.

2 THE COURT: How about absolute immunity for
3 prosecutorial decisions, does that fold in here at all?

4 MR. SCALERA: It does because there are cases
5 I believe, I cited a few in my papers, but there are --
6 and, in fact, I think I dropped a footnote. I'm
7 usually not a string site fan, but in this case, it
8 seemed appropriate to list all of the cases showing
9 that when it comes to malicious prosecution, false
10 arrest or really any cause of action that arises out of
11 a prosecutor's decision to charge a defendant, that is
12 inherently prosecutorial and, of course, under Ambler
13 v. Pacman (ph) and, as Your Honor himself, recognized
14 in the order dismissing the D.A. defendants under 1915,
15 that this is quintessentially prosecutorial conduct in
16 deciding to bring charges against a defendant.

17 So, if it is prosecutorial, then again, it's
18 black-letter law that there is absolute prosecutorial
19 immunity. Now, interestingly in his response,
20 plaintiff's defense to this is well no, you were acting
21 in an administrative capacity. Earlier, when we were
22 discussing intra-courtroom conspiracy doctrine, he said
23 we were acting in prosecutorial capacity and,
24 therefore, were agents of the state.

25 Now, plaintiff can't have it both ways here.

1 Either we are acting in a prosecutorial capacity or we
2 were acting in an administrative capacity. The case
3 law is, I don't want to go out on a limb and say
4 unanimous, but I would say I have not seen any case
5 finding that the decision to charge a defendant by a
6 prosecutor is anything other than prosecutorial
7 behavior.

8 THE COURT: Now that would apply to the
9 Assistant D.A., right?

10 MR. SCALERA: Yes.

11 THE COURT: Or does that apply to D.A.
12 Williams as well?

13 MR. SCALERA: No, an action against the
14 District Attorney is in his official capacity and,
15 again, the claim against Seth Williams here is an
16 official capacity claim only. There is no individual
17 capacity claim.

18 THE COURT: So, the claim there is a Monel
19 claim?

20 MR. SCALERA: Yes, it's a claim against the
21 D.A.'s office.

22 THE COURT: Failure to train. Now who was he
23 supposed to train, the D.A. or the police?

24 MR. SCALERA: Well, certainly taking the
25 D.A.'s office as its own separate entity, certainly the

1 District Attorney has no authority, ability or what
2 have you to train the police. So, it would have to
3 be --

4 THE COURT: So it would be a claim that he
5 failed to train the Assistant D.A.?

6 MR. SCALERA: That would have to be the
7 claim, Your Honor, but that claim would have to --

8 THE COURT: But if the Assistant D.A. has
9 absolute immunity acting a prosecutorial capacity,
10 isn't that either moot or somehow -- how can he be
11 charged with failing to train a subordinate who was
12 then absolutely immune?

13 MR. SCALERA: There is some discussion in the
14 case law, and it's an interesting issue that I don't
15 think has been fully fleshed out by the courts, because
16 it does seem, I agree with Your Honor that it's a
17 little incongruous that an Assistant D.A. can be
18 absolutely immune from liability for prosecutorial
19 actions, but then you can tag the municipality or the
20 agency with Monell liability for liability from which
21 the individual A.D.A. is absolutely immune.

22 I agree that that's an incongruity. I think
23 and I'm running off memory here, but certainly in
24 individual claims capacity if, for example,
25 hypothetically speaking, there had been an individual

1 capacity claim against the D.A. here --

2 THE COURT: Yes.

3 MR. SCALERA: -- he would also share that
4 absolute immunity, and since we're going hypothetical,
5 this isn't in my briefing, but I think the Supreme
6 Court's decision in Van De Kamp versus Goldstein for
7 which I don't unfortunately have the site off the top
8 of my head.

9 THE COURT: Well, you not well-prepared,
10 then.

11 MR. SCALERA: Clearly, I'm a failure as a
12 lawyer, Your Honor, and I'm disgracing your courtroom.

13 THE COURT: Yes. Okay. Yes.

14 MR. SCALERA: But if there hypothetically
15 were an individual claim against the D.A., then I think
16 under Van De Kamp, the D.A.'s immunity would kick in.

17 THE COURT: Well, for example, if you have no
18 constitutional violation, just by way of analogy on the
19 agent, you could not then proceed with a supervisory
20 liability.

21 MR. SCALERA: No, no, there has to be an
22 underlying constitutional violation.

23 THE COURT: Yes.

24 MR. SCALERA: And that goes back to the fact
25 that under Monel, the policy or custom at issue has to

1 have caused some sort of injury to the plaintiff.

2 THE COURT: So, what's your bottom line on
3 Monel? Where is the -- where does it break the chain
4 here?

5 MR. SCALERA: The bottom line on Monel is
6 there are no facts in the complaint to suggest any sort
7 of policy or custom and if we tease out policy and
8 custom, obviously a policy -- the 1983 treatises make
9 the point that a policy is the easiest thing on earth
10 to prove because it's usually some sort of written
11 document or public statement by the policy-maker, in
12 this case, the District Attorney, saying it is our
13 policy to ...

14 So, there's no allegation of such a policy
15 here, there are no facts, I should say.

16 THE COURT: Is there a custom here?

17 MR. SCALERA: Not in the complaint. In order
18 to show a custom, again, under Iqbal and Twombly
19 there has to be an allegation of facts, not simply,
20 conclusions.

21 In this respect, I would commend to the Court
22 the Third Circuit's decision in LeBlanc versus Stedman
23 which we cite in our papers. This is a case that is
24 almost exactly like this case. It's a -- it is a
25 plaintiff who was charged by police and Assistant

1 D.A.'s with, I think, in that case it was the crime of
2 insurance fraud and then eventually the case was nol
3 prossed and the defendants/plaintiff came and sued the
4 A.D.A.'s and county and the police for malicious
5 prosecution, false arrest, false imprisonment, all the
6 things that appear in this complaint.

7 But, what he did in that complaint mirrors
8 exactly what happened in this complaint where he said
9 here's what the individual A.D.A. did wrong and for
10 that, the Third Circuit found there was absolute
11 immunity.

12 By the way, everything that the A.D.A. did,
13 the county had a policy custom and practice of doing
14 that. There are no facts, either in LeBlanc or in this
15 case, that could lead a court to conclude that there is
16 any chance that there might be a right to compensation
17 here.

18 THE COURT: No. One other question here and
19 this may not be in the complaint, and I don't know who
20 would have the burden of showing this, there is no date
21 when the defendant was arraigned.

22 MR. SCALERA: Not in the complaint, Your
23 Honor.

24 THE COURT: Okay.

25 MR. SCALERA: I can and again --

1 THE COURT: Now, is that a statute of
2 limitations issue?

3 MR. SCALERA: I think it is a problem for
4 plaintiff in terms of --

5 THE COURT: Does he have the burden to put
6 that in a complaint or is that an affirmative defense
7 that you would come forth with?

8 MR. SCALERA: Well, the statute of
9 limitations is an affirmative defense. Courts are
10 fairly clear that when the face of the complaint makes
11 it clear that an action is untimely --

12 THE COURT: But we don't know here.

13 MR. SCALERA: Well, what we do know is that
14 in Pennsylvania State Courts, a preliminary arraignment
15 occurs typically within 24 hours of arrest and, at
16 most, 72 hours. A preliminary hearing typically takes
17 place seven to ten days later.

18 THE COURT: Is that pursuant to the Supreme
19 Court mandate rule?

20 MR. SCALERA: Those are in the -- the
21 federal, not federal, the Pennsylvania Rules of
22 Criminal Procedure and I have the exact rule in here
23 somewhere. Those rules state, I think it's, yes, under
24 Rule 516(a) of the Pennsylvania Rules of Criminal
25 Procedure, preliminary arraignment was required to

1 happen "without unnecessary delay." Now, we don't have
2 an exact date for his preliminary arraignment, but in
3 order for the statute of limitations to not bar the
4 plaintiff's action here, we would have to believe the
5 plaintiff was arrested and received no preliminary
6 arraignment for almost two years.

7 THE COURT: A year and a half, I think it is
8 maybe, isn't it?

9 MR. SCALERA: I believe and I don't recall
10 the dates off the top of my head, but I believe it was
11 almost four years after his arrest --

12 THE COURT: Yes.

13 MR. SCALERA: -- that this action was filed.
14 Now, that doesn't affect malicious prosecution, because
15 that was Hecht barred but the Supreme Court has been
16 clear that false imprisonment and false arrest causes
17 of action accrue on the date that the defendant is held
18 over pursuant to legal process.

19 THE COURT: That would apply to the
20 individuals, but how does that fold in with the D.A.?
21 In other words --

22 MR. SCALERA: Well, again, one needs to
23 show --

24 THE COURT: -- the Monel claim would be
25 barred by the statute of limitations, as far as the

1 D.A. is concerned?

2 THE COURT: Well, setting aside the malicious
3 prosecution aspect of it, any Monel claim that was
4 based on a false arrest or false imprisonment would be
5 because, again, the injury needs to occur.

6 THE COURT: How about failure to train the
7 assistant D.A. if there was such a claim to proceed.
8 Would that also be barred?

9 MR. SCALERA: Yes, Your Honor, because again,
10 at the time of the injury and the injury here allegedly
11 was --

12 THE COURT: Well, when was the charge
13 decision made by the D.A., at what point in time?

14 MR. SCALERA: I actually am afraid I can't
15 answer that with any precision, Your Honor. I imagine
16 at some point after the A.D.A. who has been assigned to
17 the matter as presented with the charging papers, but I
18 don't know if there is necessarily --

19 THE COURT: Okay. Well, let's take an
20 ordinary crime. Somebody is arrested off the street,
21 the police writes up, the charge is sent to the
22 Assistant D.A. on duty or over there. Is that when it
23 happens, the charge decision that is made at that
24 point?

25 MR. SCALERA: When it's presented to the

1 A.D.A.?

2 THE COURT: Yes.

3 MR. SCALERA: I, again, can't really answer
4 that.

5 THE COURT: Now from then, you go to the
6 arraignment?

7 MR. SCALERA: Yes, so once the decision is
8 made to charge, which I would imagine would have to be
9 made fairly quickly. I don't think in this country,
10 we're allowed to simply arrest people and hold them in
11 jail for months on end without any decision to charge.
12 I think you need to either charge them and arraign them
13 and have a neutral magistrate make a determination of
14 probable cause or you have to let them go.

15 So, the decision to charge is made.

16 THE COURT: Well now, wouldn't the charge
17 decision, it wouldn't necessarily have been made by the
18 Assistant D.A. Gore. Would that have been made by the
19 Assistant D.A. on duty?

20 MR. SCALERA: I think that initially would go
21 to our charging unit.

22 THE COURT: Yes.

23 MR. SCALERA: That's my belief of how it
24 happens, because again, typically a preliminary
25 arraignment is going to happen within 24 hours of

1 arrest, so as a general matter charging decisions, I
2 think, are made very quickly. If something comes in at
3 night where A.D.A. Gore is at home asleep --

4 THE COURT: Right, That's what I mean, yes.

5 MR. SCALERA: -- that's why we have a 24-hour
6 charging unit.

7 THE COURT: So, after the individual is
8 arraigned, then this case would be assigned to whatever
9 unit, for bank robbery or whatever it is --

10 MR. SCALERA: Yes, in this case, it would
11 be --

12 THE COURT: That's when the Assistant D.A.
13 would get the case, at that point.

14 MR. SCALERA: I believe so and in this case,
15 it would have gone to the Family Violence Unit and, of
16 which, A.D.A. Gore was a member.

17 THE COURT: Okay.

18 MR. SCALERA: Then within seven to ten days,
19 on average, you would have a preliminary hearing and
20 then the case would proceed from there.

21 THE COURT: Okay. So I understand that.
22 Thank you, Mr. Scalera.

23 Mr. Hamilton, welcome.

24 MR. HAMILTON: Yes, Your Honor.

25 THE COURT: What do you think?

1 MR. HAMILTON: Well, it was suggested that a
2 policy of the D.A. was something that should have been
3 included in our complaint, but we aren't privy to that,
4 we weren't privy to that at the time we filed it. We
5 would have an opportunity with interrogatories and with
6 depositions to flush the policy out.

7 My client spent three years in jail, the case
8 was dropped on the date he was supposed to go to trial
9 saying that the witness had recanted.

10 THE COURT: Right.

11 MR. HAMILTON: That speaks to investigation.
12 It speaks to why wasn't this case investigated and
13 vetted earlier? There is a sexual, I don't know the
14 proper name, but there's a unit --

15 THE COURT: Yes. Family unit, I think he
16 called it.

17 MR. SCALERA: Family Violence.

18 MR. HAMILTON: I practiced for a long time
19 and I've, on occasion, taken accused people to office
20 the D.A. had on -- near -- on Lehigh Avenue, the
21 hospital there at 20th & Lehigh, down at that area, but
22 it was a unit that was specifically designated to
23 handle cases where sexual misactivity, misdoings were
24 alleged.

25 In that case typically, they would call the

1 person who hadn't been charged, but was accused, to
2 come in so they could interview him. So, it was
3 different from a lot of other criminal cases where a
4 person makes a charge, they go arrest him and the
5 process is ongoing.

6 So, by having that kind of facility, there
7 are rules, I'm sure, of investigating these kind of
8 cases separate from other cases and we don't know that
9 right now to bring them-- you know, to bring it to the
10 Court, but if we have the opportunity to explore, I'm
11 sure we would find out what we're looking for.

12 I say that the D.A. addressed this by setting
13 up this special office, so to speak, to handle these
14 kinds of cases and it was my client's allegation all
15 along that this child was being used by the mother, who
16 had psychological problems, and nobody would listen to
17 him.

18 So, it's been three years and they found out
19 there was a problem, she said that the mother forced
20 her and she recanted her statement.

21 THE COURT: Well, are you saying that, as you
22 sit here today, you don't know what that policy is,
23 because I don't think -- that wouldn't fly.

24 MR. HAMILTON: No, I'm saying that the policy
25 was not one where D.A.'s were trained or there was some

1 sort of protocol where they had to follow-up
2 allegations in a particular in terms of the best scene.

3 In fact and I think in this case, the
4 defendant in the criminal case, was never called to
5 this office for an interview. There were other people
6 who would have been witnesses who were never called.
7 So, if there was a policy, they did adhere to the
8 policy.

9 We are alleging that it was broken and the
10 brokenness of the system harmed my client, harmed him
11 to the effect that he had to sit in jail for three
12 years.

13 So, if they had a policy, they should have
14 had a policy and if they didn't, that's a problem and
15 if they had a policy, they did not adhere to the policy
16 of evaluating or reevaluating this case over the course
17 of three years.

18 THE COURT: Now, if you're given leave to
19 amend, do you have any facts which have not been pled
20 which will support these claims?

21 MR. HAMILTON: I think in the complaint, we
22 mention the fact that the mother of the child, the
23 D.A.'s were told that she was -- she had mental
24 problems, that she was bipolar.

25 Obviously, that wasn't addressed or it wasn't

1 looked into or -- that's why we being this issue up, of
2 the lack of investigation. That is a problem in this
3 case, that it was a problem in this case.

4 THE COURT: Okay. Let me ask Mr. Scalera.
5 As I understand Mr. Hamilton's theory here is that
6 after the defendant was arrested, there was a hiatus
7 there during which there was either no investigation or
8 an inadequate investigation.

9 In other words, he cannot point to a
10 particular piece of paper in the D.A.'s office that
11 said this is the way you do things. I think he's sort
12 of showing that there is no piece of paper as to how
13 you do things and that is the absence of a policy in
14 itself, some kind of policy. What's your reaction to
15 that?

16 MR. SCALERA: Well, it sounds to me like a
17 failure to train claim --

18 THE COURT: Right.

19 MR. SCALERA: -- which brings us then right
20 back to Connick versus Thompson and single incident
21 liability.

22 Now, Your Honor referenced the City of
23 Canton, hypothetical earlier about when there might be
24 single incident liability for a failure to train, but
25 in Connick versus Thompson, the Supreme Court said

1 there could not be single incident liability for a
2 failure to train claim against prosecutors. The
3 reasoning in that case was that unlike the City of
4 Canton, hypothetical where you're, let's say, you just
5 give a police office a gun and say all right, go get
6 them and then you don't train them on the
7 constitutional limitations on the use of deadly force,
8 that's a case where it's so obvious that you have to
9 train them.

10 By contrast, prosecutors have gone through
11 three years of law school, they've studied and passed
12 the Bar exam, they have taken CLE's and so what the
13 Supreme Court said is that unlike the city of Canton,
14 hypothetical, which would support single incident
15 liability, district attorneys' offices are allowed to
16 rely on lawyers' training unless there are other
17 incidents that show there is a problem.

18 Under Iqbal and Twombly, you have to allege
19 facts, not just conclusions that, oh there was a policy
20 in custom and failure to train, you have to allege some
21 sort of facts.

22 THE COURT: Now, let's assume, under that
23 theory that it was Assistant D.A. Gore, just a
24 hypothetical, she did nothing. She just showed up and
25 she didn't do an investigation.

1 Would she be covered by absolute immunity in
2 that she continued the prosecution of the case or would
3 that be an instance where the D.A. would fail to
4 supervise what A.D.A. Gore was doing?

5 MR. SCALERA: If I'm following the question
6 here, I mean --

7 THE COURT: There are two different
8 scenarios. One is she does nothing as far as the
9 investigation, even though there may be a protocol
10 about what she is supposed to do, she does nothing. Is
11 she individually liable?

12 MR. SCALERA: Well, I think she would still
13 be subject to absolute immunity. It would seem a
14 little incongruous to me to say that a prosecutor is
15 absolutely immune for their decision to charge a
16 defendant. Then, somehow loses that immunity by
17 deciding to maintain that action and not drop it.
18 Choosing to charge and choosing to drop are just two
19 flip sides of the same coin.

20 THE COURT: So, during that period of time,
21 no matter what you do, from the time you decide to the
22 time you drop, you're absolutely immune during that
23 period of time as a matter of policy, public policy?

24 MR. SCALERA: I haven't seen any cases
25 specifically on that in my reading of the case law, but

1 come down one way or another simply because it's a
2 fairly unique fact pattern.

3 THE COURT: Okay. Well, so the second
4 point then is she did nothing, she may be absolutely
5 immune but we may be going back to the earlier point
6 but nobody supervised her and figure out that she was
7 doing nothing. That is the D.A. who had the
8 responsibility for the office, did not supervise her
9 work, liable?

10 MR. SCALERA: To the extent that the claim
11 appears in the complaint, no, not liable because the
12 complaint against the D.A. is an official capacity
13 complaint which means it has to meet the standards of
14 Monel which means you have to plead facts under Iqbal
15 and Twombly showing a policy of facts.

16 THE COURT: So that would be only if there
17 was a claim of individual liability, such as a sergeant
18 over a police office, something along those line.

19 MR. SCALERA: Perhaps, but then we get back
20 into what we were discussing earlier, Your Honor, as
21 far as if an individual A.D.A., acting in her
22 individual capacity, is entitled to absolute immunity,
23 then can a supervisor then in turn somehow be tagged in
24 their individual capacity with liability.

25 I think if you have a look at Van De Kamp

1 versus Goldstein, I think the Court will see that the
2 Supreme Court, pretty forcefully answered no and that
3 makes sense because it would again be incongruous to
4 say that an individual A.D.A.'s actions are
5 prosecutorial and, therefore, she's entitled to
6 absolute immunity, but the person supervising or
7 training that A.D.A. is not entitled to immunity and in
8 Van De Kamp, the Supreme Court said no, that would be
9 absolutely incongruous.

10 So, the District Attorney, if hypothetically
11 speaking or an individual capacity claimed here against
12 him, the D.A., I think, under Van De Kamp, would be
13 entitled to the exact same absolute immunity that
14 A.D.A. Gore is entitled to here.

15 THE COURT: Okay. Good, thank you. Mr.
16 Atkins, do you want to add anything?

17 MR. ATKINS: Yes. Well, just in terms of
18 plaintiff's last claim, Your Honor, which was an
19 inadequate investigation --

20 THE COURT: Yes.

21 MR. ATKINS: -- this would be appropriate for
22 summary judgment at the end of this case, but there is
23 no constitutional right to a thorough investigation.
24 The prosecutor nor the police have any obligation to
25 seek out every witness plaintiff believes exonerates

1 him. There's no right to that, so you can't base a
2 Monel claim on what he believes is failure, because the
3 constitution says it's not required.

4 THE COURT: Okay. Thank you. Mr. Hamilton,
5 any final word?

6 MR. HAMILTON: Well, from my client's
7 perspective is that the system failed him in the sense
8 that this case should have been resolved a lot earlier
9 or not even brought at all, and that he was harmed
10 being in jail for three years.

11 THE COURT: What happened with all those
12 continuances, do you know?

13 MR. HAMILTON: No, I don't.

14 THE COURT: Okay. He had a lawyer
15 representing him in the criminal prosecution, right?

16 MR. HAMILTON: I understand that. Well, I've
17 done a lot of criminal --

18 THE COURT: You didn't represent him --

19 MR. HAMILTON: No, I did not represent him.

20 THE COURT: No. Okay.

21 MR. HAMILTON: But, I know that ordinarily
22 you have the 600 motion which is the being tried, that
23 after 360 days, 365 days in jail, you at least are
24 given -- in Philadelphia County they put you on a
25 bracelet, the anklet --

1 THE COURT: Home detention.

2 MR. HAMILTON: -- home detention but they
3 deny it, almost -- well some judges denied it, you
4 know, as a matter of course.

5 I've given the D.A. an opportunity that
6 continuances with a, saying that continuance -- with
7 the defendant's continuances so they stretch it out.
8 I don't know the history of this one and why that was,
9 in fact, --

10 THE COURT: Okay. This is what we are going
11 to do. The complaint doesn't pass muster. I think
12 that's clear except the two individual -- detective
13 Hammond and the police officer, who was involved here.
14 As to the others, it does not. I think this is a
15 serious case, Officer Carter I meant to say.

16 Beyond that, it doesn't pass muster, but it
17 is a serious case and I want to be sure that we get to
18 the bottom of it. The man is in jail for three years
19 and then the day of the trial, you know, it goes away,
20 I think is a serious matter, and you have only been in
21 the case, even though this is the third complaint,
22 you've only filed one complaint and --

23 MR. HAMILTON: Yes, yes.

24 THE COURT: -- maybe you didn't have an
25 opportunity to completely examine the circumstances

1 here. I think this is what I'm going to do. I'm going
2 to grant the motion with leave to amend as to all of
3 the defendants, except Detective Hammond and Office
4 Carter.

5 Now, when you file, if you do file, a fourth
6 amended complaint, I would like you to -- which is a
7 little difficult to follow the complaint as it is, to
8 identify each of the defendants and what claims you are
9 making against what defendants.

10 Then, that as to each defendant and the claim
11 against that defendant, identify the facts which
12 support your claim. In other words, as against D.A.
13 Williams, these are the claims and these are the facts
14 that support the claims. We ought to be able to then
15 review them once they have been properly laid out.

16 I do remind you that if you are going to
17 proceed on the basis of Monel, that it is important
18 that you identify what is the policy that you claim has
19 been violated.

20 I would then finally, point to Twombly and
21 Iqbal which represented, at least in terms of 1983
22 jurisprudence, maybe not so much in some of the
23 commercial cases, but as far as 1983 jurisprudence, it
24 does represent a C change to the extent that you cannot
25 simply say, let me take discovery and then I'll get the

1 facts to support my complaint.

2 Maybe the wisdom of that may be questioned,
3 but that is what it is. We cannot allow a claim
4 to proceed unless you have sufficient facts which make
5 that claim plausible. We also cannot accept the simple
6 conclusions or merely pointing to the elements of the
7 claim.

8 So, I'm sure you will make a valiant effort
9 to put this together in a way that would allow it to
10 proceed as to the other defendants. So, I'm going to
11 give you 20 days, is that enough?

12 MR. HAMILTON: Yes, Your Honor.

13 THE COURT: Okay. I'm going to give you 20
14 days to file an amended complaint and then we'll see
15 what's there. Pending that, I think we will just
16 simply wait to see what happens before going ahead with
17 any of the other defendants in the case.

18 MR. HAMILTON: Yes, Your Honor.

19 THE COURT: Okay. Anybody else, anything
20 else? Okay. Good. Thank you.

21 ALL: Thank you, Your Honor.

22 THE COURT: We are adjourned.

23 (Proceedings adjourned, 2:47 p.m.)

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CERTIFICATION

I, Mary Scarduzio, hereby certify that the foregoing is a correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

3/8/17
Date

Mary Scarduzio
Mary Scarduzio